

Appln. No. 10/719,248  
Amendment dated April 29, 2005  
Reply to Office Action mailed February 1, 2005

### REMARKS

Reconsideration is respectfully requested.  
Claims 1 through 6 remain in this application.

The Examiner's rejections will be considered in the order of their occurrence in the Office Action.

#### Paragraphs 1 and 2 of the Office Action

Claim 1 has been rejected under 35 U.S.C. §102(b) as being anticipated by Drager ('766).

It is submitted that the Drager reference does not disclose, teach or suggest "a ring member having a diameter smaller than said scuba tank, said ring member being for abutting a bottom wall of said scuba tank". The Drager reference teaches a carrying device or belt for breathing apparatus that fails to teach the ring member abutting the bottom wall of the scuba tank so that the strap members extend around the scuba tank from the bottom wall of the scuba tank as claimed by the applicants. The Drager reference teaches the ring being positioned at a distance from the tanks and thus fails to meet the requirements of the claims. Further, for claims to be anticipated by a reference that reference must describe every element of those claims as well as those elements must be arranged as is required by the claims as expressed in MPEP 2131 stated below.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

"The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, i.e., identity of terminology is not required. In re Bond,

Appln. No. 10/719,248  
Amendment dated April 29, 2005  
Reply to Office Action mailed February 1, 2005

910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 U.S.C. 102 rejection. See MPEP § 2131.01."

Therefore, it is submitted that the Drager reference would not lead one to anticipate the combination of features as claimed by the applicants.

Withdrawal of the §102(b) rejection of claim 1 is therefore respectfully requested.

**Paragraphs 3 and 4 of the Office Action**

Claims 2-6 have been rejected under 35 U.S.C. Section 103(a) as being unpatentable over Drager ('766) in view of Haber ('894).

In regard to claim 1 and 6, it is submitted that the combination of Drager with Haber is not suggested by the prior art, and even if such a combination were to be made, one would not be led to the combination of features recited in applicantss' claims. In particular, the references do not disclose, teach or suggest "a ring member having a diameter smaller than said scuba tank, said ring member being for abutting a bottom wall of said scuba tank". As discussed above, the Drager reference fails to teach the ring member abutting the bottom wall of the scuba tank so that the strap members extend around the scuba tank from the bottom wall of the scuba tank as claimed by the applicants. The Haber reference teaches a backpack assembly that fails to teach the ring member abutting the bottom wall of the scuba tank so that the strap members extend around the scuba tank from the bottom wall of the scuba tank as claimed by the applicants. Further, the Haber reference teaches away from that claimed by the applicant in that the Haber reference teaches the ring positioned on the chest of the user and in a spaced relationship from the backpack and therefore fails to meet the requirements of the applicants' claims. It is also submitted that the mere fact that one may argue that the prior art is capable of being modified to achieve a claimed structure does not by itself make the claimed structure

Appln. No. 10/719,248

Amendment dated April 29, 2005

Reply to Office Action mailed February 1, 2005

obvious--there must be a motivation provided by the prior art, and that motivation is totally lacking in the reference.

The examiner finds the claimed shape would have been obvious urging that (our emphasis) "it is obvious for one skilled in the art to form each hook base of any desired shape \*\*\* since *this is within the capabilities of such a person.*" Thus, the examiner equates that which is within the capabilities of one skilled in the art with obviousness. Such is not the law. There is nothing in the statutes or the case law which makes "that which is within the capabilities of one skilled in the art" synonymous with obviousness.

The examiner provides no reason why, absent the instant disclosure, one of ordinary skill in the art would be motivated to change the shape of the coil hooks of Hancock or the German patent and we can conceive of no reason.

Ex parte Gerlach and Woerner, 212 USPQ 471 (PTO Bd. App. 1980)  
(emphasis in original).

Therefore, it is submitted that the combination of the Drager reference with the Haber reference would not lead one to the combination of features as claimed by the applicants.

Claims 2 through 5 are dependent upon claim 1, particularly as amended, and therefore incorporate the requirements of claim 1. Thus, claims 2 through 5 are also believed to be allowable over the cited reference.

Withdrawal of the §103(a) rejection of claims 2-6 is therefore respectfully requested.


Appln. No. 10/719,248  
Amendment dated April 29, 2005  
Reply to Office Action mailed February 1, 2005

**CONCLUSION**

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited.

Respectfully submitted,

LEONARD & PROEHL, Prof. L.L.C.

By  Date: 4/29/05  
Robert K. Huck (Reg. No. 45,761)  
LEONARD & PROEHL, Prof. L.L.C.  
3500 South First Avenue Circle, Suite 250  
Sioux Falls, SD 57105-5807  
(605)339-2028 FAX (605)336-1931